

HOUSE BILL 374

By Briley

AN ACT to amend Tennessee Code Annotated, Title 49,  
Chapter 10, Part 6, relative to special education.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 10, Part 6, is amended by adding Section 2 through 11 as new, appropriately designated sections.

SECTION 2.

(a) The department of education shall enforce the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and Tennessee special education laws. The department of education shall affirmatively monitor local education agencies annually and obtain sufficient information to determine whether each local education agency is in compliance with the IDEA, Section 504 of the Rehabilitation Act, and Tennessee special education laws. The monitoring process shall include collection and recording of data culled from review of administrative complaints, requests for due process, and other appropriate means. The commissioner of education shall publish an annual report on the official state website indicating whether each LEA is in compliance with the IDEA, Section 504, and Tennessee special education laws.

(b) The department of education shall ensure that all LEAs:

- (1) Identify all children eligible for services under such laws;
- (2) Properly and timely evaluate eligible children as requested by the child's education program planning teams and parents, or the child, if such child is eighteen (18) years of age or older, under the IDEA and Section 504 of the Rehabilitation Act;
- (3) Properly develop individualized education programs and 504 plans;

- (4) Provide qualified professionals and paraprofessionals who implement such plans;
- (5) Implement IDEA and Section 504 plans;
- (6) Use research based methods, if available; and
- (7) Provide proper notice, consent, and protection of the confidentiality of the child's records and personal information.

### SECTION 3.

(a) If the department of education learns that a local education agency has violated any portion of the IDEA, Section 504 of the Rehabilitation Act or Tennessee special education laws, it shall notify the LEA and the parents of the subjects of such violation within ten (10) business days of discovering such violation. The LEA shall provide the department with documentation that it has corrected the violation within thirty (30) calendar days from the date of notification from the department. The department shall provide the documentation of the correction to the parents of the victim of the violation within ten (10) business days of receiving such documentation. If the LEA fails to timely provide documentation of correction of the violation, the department shall take over the direct administration of the LEA's special education program until such documentation of correction provided to the department independently confirms compliance.

(b) The department shall provide copies of its monitoring reports to the state board of education. The state board shall review the monitoring reports and promulgate rules and regulations, in accordance with the Tennessee Uniform Administrative Procedures Act, compiled at Title 4, Chapter 5, as necessary to address problems in implementing special education law as shown by the reports.

SECTION 4. The department of education shall promptly investigate complaints filed by parents or children and shall enforce the Individuals with Disabilities Act, Section 504 of the Rehabilitation Act and Tennessee special education laws. The department shall carry out its obligation to enforce such laws through the administrative complaint process in the following manner:

(1) The department shall make available a complaint form on the official Tennessee web site and, upon request, through U.S. mail. The department shall facilitate the submission of complaint forms via internet.

(2) An administrative complaint to the division of special education regarding an LEA program:

(A) Shall be in writing;

(B) Shall be addressed to the division;

(C) Shall be signed by the person making the complaint. If the complaint is filed via internet, this requirement shall be deemed to have been met so long as the name of the filer is indicated in the complaint. Anonymous complaints shall not be processed;

(D) Shall state, to the best of the filer's ability, the problem with the child's education; and

(E) Need not identify the specific law or regulation involved.

(3) The department shall assign a staff member to investigate the complaint.

(4) The department shall notify the filer of receipt of the complaint and the name of the staff member assigned to the complaint, and the staff member's contact information within ten (10) calendar days of receipt of such complaint.

(5) Department staff persons shall be trained utilizing the manual prepared by the administrative office of the courts for training of administrative law judges and mediators.

(6) If the staff member is unable to understand the nature of the complaint, the staff member shall contact the filer and seek to clarify the complaint.

(7) Once the staff person understands the complaint, the staff person shall determine whether the department has jurisdiction over the complaint. If the staff person determines that the department does not have jurisdiction over the complaint, the department shall notify the filer that the department does not have such jurisdiction within ten (10) business days of such determination. The department shall not comment on the validity of complaints over which it has no jurisdiction. If the complaint alleges physical or emotional abuse, the department shall provide the contact information to the appropriate state abuse registry.

(8) If the complaint alleges that an LEA has committed a procedural violation of the applicable laws, the department shall determine whether the allegation is founded. If the allegation is founded, the department shall issue a written finding confirming the violation, regardless of whether the department believes that the procedural violation has caused substantive harm to the student's right to an education.

(9) If the complaint alleges that an LEA has committed a substantive violation of the applicable laws, the department shall determine whether the allegation is founded. If the allegation is founded, the department shall issue a written finding confirming the violation and shall require the offending LEA to provide compensatory education to the student. The LEA shall provide compensatory education in an amount equal to the number of school days during which the substantive violation was not or is not corrected prior to and after notification by the department of such violation.

(10) If the department finds that a violation of applicable law has been committed, it shall notify the filer and LEA within ten (10) business days of its finding.

(11) The department shall require an LEA that has committed a procedural violation of applicable law to correct the violation within ten (10) business days.

(12) The department shall require an LEA that has committed a substantive violation of applicable law to correct the violation within twenty (20) business days. The LEA shall exercise diligent efforts to comply with the deadline for correction. If the LEA is unable to correct the violation within twenty (20) business days of notification, despite its diligent efforts, it shall be granted an extension of time for a reasonable period to correct the violation.

(13) Once an LEA takes measures to correct a procedural or substantive violation of applicable law, the LEA shall provide written notice to the department of such measures and shall provide an exact copy of such notice to the filer. The department shall independently determine whether the measures taken by the LEA did, in fact, correct the violation and shall provide written notice to the filer and the LEA of its determination within ten (10) business days of such determination.

(14) The filer shall have ten (10) business days to object to the department's determination of correction. Such objection shall be in writing. The department shall provide the means to file an objection via internet. The department shall review the information contained in the objection and shall determine, through investigation, whether the objection is founded. As a part of the investigation, the department shall inform the LEA in writing of the filer's objection. The LEA shall respond to the objection in writing within ten (10) business days and shall mail an exact copy of its response to the filer. The department shall determine whether the objection is founded based on the information contained in the objection, response, independent verification or onsite

inspection of the correction in question. If the department finds that the objection is founded, the department shall prescribe measures to correct the violation and the LEA shall provide the student with compensatory education until the violation is corrected.

(15) If the LEA fails to respond in ten (10) business days, the department shall make a finding that the objection is founded and order the LEA to take additional measures to correct the violation.

(16) The department shall publish all founded violations of applicable law on the official state web site within thirty (30) business days of such finding. The publication shall include a description of the violation, including citation of the law or regulation violated, a fact summary, and the name of the LEA and whether the violation has been corrected. The publication shall not disclose the child's identifying information. If the department determines that a violation is corrected, it may update the published violation summary to include notification of correction if the LEA so requests.

(17) The department shall promptly publish the results of its investigations of complaints on the official state web site, but shall not disclose the child's identifying information. The name of the LEA shall be published.

## SECTION 5.

(a) All special education mediations shall be conducted by Rule 31 certified mediators employed by or contracted by the secretary of state

(b) The administrative office of the courts shall provide legal training on special education law to the mediators who conduct special education mediation. The administrative office of the courts shall prepare a training manual for the mediators which shall be published on the official state of web site. The administrative office of the courts shall work with attorneys with substantial experience in advocating for children in special education cases to develop the training manual.

(c) The state shall not pay private providers or attorneys to prepare the mediation manuals or to train the mediators.

(d) No local education agency may bring suit against a child or parent under the Individuals with Disabilities Education Act unless such LEA has attempted to resolve the matter in mediation or the LEA has requested mediation and the parent or child has refused mediation.

(e) All LEAs shall participate in mediation in good faith, if a parent or child requests mediation.

#### SECTION 6.

(a) All special education due process cases shall be heard by administrative law judges (ALJs) employed by the secretary of state. Such ALJs shall have jurisdiction to hear complaints arising from the IDEA, Section 504 of the Rehabilitation Act, and Tennessee special education laws. They shall have no jurisdiction to hear allegations of physical or emotional abuse of a student.

(b) The administrative office of the courts shall provide legal training on special education law to the ALJs assigned to hear special education due process cases. The administrative office of the courts shall prepare a training manual for ALJs which shall be published on the official state web site. The administrative office of the courts shall work with attorneys with substantial experience in advocating for children in special education cases to develop the training manual.

(c) The state shall not pay private providers or attorneys to prepare the ALJ manuals or to train the ALJs.

(d) The ALJ shall conduct an informal hearing and shall relax the rules of evidence, as needed, to learn all relevant information concerning the child's education.

(e) In order to reduce the time needed to prepare for a special education due process hearing, the rules of evidence shall be relaxed in the following manner during the discovery process, and the parties shall cooperate with discovery in the following manner:

(1) The LEA shall provide a photocopy of all of the child's education records within its control within ten (10) days of the request for a due process hearing unless the parent or child does not want the records.

(2) All of the child's educational records shall be deemed admissible as evidence in the due process hearing.

(3) If an LEA has denied a child a service requested by the parent, the LEA may use only those personnel and experts with whom the LEA consulted when making the decision to deny the service as witnesses at the due process hearing. The LEA shall not be permitted to subject the child to an evaluation solely for purposes of discovery after the denial of the service in order to support a prior denial of a requested service.

(f) Final orders in special education cases shall include the following findings of fact and law in the sequence listed below:

(1) The child's disabilities;

(2) The child's unique educational needs;

(3) A determination of whether the child's individualized education program (IEP) under consideration by the ALJ was or is reasonably calculated to remediate the child's unique educational needs;

(4) A determination of whether the LEA has provided documentation that it has implemented the services called for in the IEP. If not, the ALJ shall find that such services have not been provided;

(5) A determination of whether the LEA has provided the ALJ with documentation to demonstrate the child's progress (other than modified grades). If not, the ALJ shall presume that the child did not obtain an appropriate education under the IDEA;

(6) A determination of whether the LEA provided documentation that it used research based methods, if any such methods exist. If such methods exist, but the LEA did not use such methods, a presumption shall be created that the LEA did not confer a free appropriate public education upon the child. The LEA may overcome the presumption by providing documentation of a meaningful educational benefit, if any;

(7) A determination of whether the LEA committed procedural violations. If so, the ALJ shall list each and every such violation;

(8) A determination of whether the procedural violation resulted in depriving the parent or child a meaningful opportunity to participate in developing the child's IEP. If so, the ALJ shall find that the LEA has caused substantive harm to the child and that the child is entitled to compensatory education;

(9) A determination of whether the LEA's procedural violations, if any, result in any other substantive harm. If so, the ALJ shall award the child compensatory education or reimbursement of privately provided services, if the private services were appropriate;

(10) A determination of whether the LEA conferred a meaningful benefit upon the child. If so, an explanation of what benefit did the child receive. If the ALJ finds that the child received a meaningful educational benefit, the ALJ shall delineate the evidence presented that supports the finding; and

(11) A determination of which party is the prevailing party.

(g) The secretary of state shall prepare a form which comports with this section. The ALJs shall utilize the form when preparing their final orders in due process cases. All ALJs shall provide their final orders either on disk or as an email attachment to the office of the secretary of state so that the orders may be published without delay.

(h) An ALJ shall render a decision on the request for due process within forty-five (45) days of the request for due process unless the parties request an extension of time to attempt mediation or in the event of an actual emergency.

(i) All administrative decisions shall be published on the official state web site. The identifying information concerning the child shall not be published.

#### SECTION 7.

(a) If the ALJ does not render a decision within forty-five (45) days, then it shall be deemed that the parent and child have exhausted administrative remedies under state law.

(b) An LEA in this state shall exhaust its administrative remedies prior to seeking relief under the IDEA, Section 504 of the Rehabilitation Act, and Tennessee special education laws prior filing a suit in state or federal court.

SECTION 8. LEAs shall pay the attorney fees and costs of the parent or child in a special education due process case if the parent or child is the prevailing party. A parent or child shall not be required to pay attorney fees or costs of an LEA, even if the LEA is the prevailing party.

SECTION 9. It shall be unlawful for an LEA to have its attorney present during a child's IEP team meeting if the parent or child does not also have an attorney present. If the parent of the child is an attorney, but is not acting as the child's attorney, the LEA may not have its attorney present at the child's IEP team meeting unless the parent's attorney is also present.

SECTION 10. An LEA or parent attorney is not a member of the IEP team, except when the parent of the child is also the attorney for the child. It shall be unlawful for an LEA or parent or child's attorney to represent that such attorney is a member of the child's IEP team unless the attorney is also the parent of the child.

SECTION 11.

(a) The department of education and all LEAs are prohibited from employing any individual whom child protective services or adult protective services has found to have committed abuse against either a child or adult.

(b) The department of education and all LEAs shall provide the names of all of its employees to the department of human services. The department of human services shall determine whether the employees of the department of education and LEAs were confirmed abusers and shall provide the department of education with a list of all confirmed abusers who are currently employed by LEAs. The department of education shall ensure that the LEAs and the department terminate the employment of confirmed abusers immediately.

SECTION 12. The state board of education is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act compiled at Title 4, Chapter 5.

SECTION 13. This act shall take effect upon becoming a law, the public welfare requiring it.